

R09-119

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF MERCHANTVILLE, COUNTY OF CAMDEN, NEW JERSEY AUTHORIZING AND APPROVING THE ISSUANCE AND SALE OF UP TO OF \$1,845,000 OF BONDS OF THE BOROUGH OF MERCHANTVILLE CONSISTING OF THE BOROUGH'S GENERAL OBLIGATION BONDS, SERIES 2009A, AND THE BOROUGH'S GENERAL OBLIGATION BONDS, SERIES 2009B; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENTS TO BE EXECUTED BY THE BOROUGH AND EACH OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AND STATE OF NEW JERSEY, ACTING BY AND THROUGH THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; FURTHER AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT, ALL PURSUANT TO THE 2009 NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST FINANCING PROGRAM; AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

BACKGROUND

WHEREAS, the Borough of Merchantville, County of Camden, New Jersey ("Borough") has determined there exists a need for the rehabilitation of existing gravity sanitary sewer lines and manholes within the Borough's Sanitary Sewer System including, but not limited to, the cure in place pipe lining of gravity sewer lines and in-place repair of gravity sewer manholes ("2009 Project") as described in that certain Loan Agreement ("Trust Loan Agreement") to be entered into between the Borough and the New Jersey Environmental Infrastructure Trust ("Trust") and that certain Loan Agreement ("Fund Loan Agreement"; together with the Trust Loan Agreement, the "Loan Agreements") to be entered into between the Borough and the State of New Jersey, acting by and through the New Jersey Department of Environmental Protection ("State"), all pursuant to the 2009 New Jersey Environmental Infrastructure Trust Financing Program ("Program"); and

WHEREAS, the Borough has determined to use the proceeds of a loan to be made by each of the Trust ("Trust Loan") and the State ("Fund Loan"; together with the Trust Loan, the "Loans") pursuant to the Trust Loan Agreement and the Fund Loan Agreement, respectively, to permanently finance the 2009 Project; and

WHEREAS, to evidence the Loans, each of the Trust and the State require the Borough to authorize, execute and deliver its General Obligation Bonds, Series 2009A, to the Trust ("2009A Bonds") and its General Obligation Bonds, Series 2009B, to the State ("2009B Bonds"; together with the 2009A Bonds, the "2009 Bonds"), pursuant to the terms of applicable law and pursuant to the terms of the Loan Agreements; and

WHEREAS, pursuant to the Local Bond Law, constituting Chapter 169 of the Laws of 1960 of the State of New Jersey, as amended and supplemented ("Local Bond Law"), the Borough Council of the Borough has, pursuant to Bond Ordinance No. 2008-12, duly and finally adopted and published in accordance with the requirements of the Local Bond Law ("Bond Ordinance"), authorized the issuance of general obligation bonds or bond anticipation notes of the Borough to finance the costs of the 2009 Project; and

WHEREAS, the Trust and the State have expressed their desire to close in escrow the making of the Loans, the issuance of the 2009 Bonds and the execution and delivery of the Loan Agreements, all

pursuant to the terms of an Escrow Agreement ("Escrow Agreement") to be entered into between the Trust, the State, the Escrow Agent and the Borough; and

WHEREAS, to effectuate the financing plan described in the above mentioned paragraphs, it is necessary for the Borough to adopt this resolution and to authorize and approve the issuance and sale of the 2009 Bonds in a principal amount up to \$1,845,000; and

WHEREAS, *N.J.S.A.* 40A:2-27(a)(2) allows for the sale of the 2009A Bonds and the 2009B Bonds to the Trust and the State, respectively, without any public offering, and *N.J.S.A.* 58:11B-9(a) allows for the sale of the 2009 Bonds to the Trust, without any public offering, all under the terms and conditions set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MERCHANTVILLE, COUNTY OF CAMDEN, NEW JERSEY, PURSUANT TO THE LOCAL BOND LAW (NOT LESS THAN TWO-THIRDS OF ALL THE MEMBERS THEREOF AFFIRMATIVELY CONCURRING), AS FOLLOWS:

Section 1. The Borough authorizes and approves the issuance of the 2009 Bonds in two series (2) in a total principal amount of up to \$1,845,000 to be designated, "Borough of Merchantville, County of Camden, New Jersey, General Obligation Bonds, Series 2009A" and "Borough of Merchantville, County of Camden, New Jersey, General Obligation Bonds, Series 2009B", respectively. The 2009 Bonds will be used to pay the costs of the 2009 Project. In accordance with *N.J.S.A.* 40A:2-27(a)(2) and *N.J.S.A.* 58:11B-9(a), the Borough hereby sells and awards the 2009A Bonds and the 2009B Bonds to the Trust and to the State in accordance with the provisions hereof.

Section 2. The Chief Financial Officer is hereby authorized to determine in accordance with the Local Bond Law and pursuant to the terms and conditions established by the Trust and the State under the Loan Agreements and the terms and conditions hereof, the following items with respect to the 2009A Bonds and the 2009B Bonds:

- (a) The aggregate principal amount of the 2009A Bonds and the 2009B Bonds to be issued;
- (b) The maturity and annual principal installments of the 2009A Bonds and 2009B Bonds, which maturity shall not exceed twenty (20) years;
- (c) The date of the 2009 Bonds;
- (d) The interest rates of the 2009 Bonds;
- (e) The purchase price for the 2009 Bonds; and
- (f) The terms and conditions under which the 2009 Bonds shall be subject to redemption prior to their stated maturities.

Any determination made by the Chief Financial Officer pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the 2009 Bonds by the parties authorized under Section 3 hereof.

Section 3. The 2009 Bonds shall be in the form prescribed and permitted by the Local Bond Law, as Bond Counsel may advise, and as the Borough, the Trust and the State shall approve. The 2009 Bonds shall be issued in fully registered form and shall be payable to the registered owners thereof as to principal and interest in lawful money of the United States of America. The 2009 Bonds will be executed on

behalf of the Borough by the manual signatures or facsimile signatures of the Mayor and Chief Financial Officer, attested by the Borough Clerk (such execution shall constitute conclusive approval by the Borough of the form of the 2009 Bonds), and shall bear the affixed, imprinted or reproduced seal of the Borough thereon. The 2009A Bonds and the 2009B Bonds shall be substantially in the form set forth in the Trust Loan Agreement and the Fund Loan Agreement, respectively.

Section 4. The terms of the 2009 Bonds authorized to be set forth by the Chief Financial Officer in accordance with Section 2 hereof shall be ratified by the affirmative vote of 2/3 of the full members of the Borough Council.

Section 5. The full faith and credit of the Borough are irrevocably pledged to the punctual payment of the principal of and interest on the 2009 Bonds and, to the extent payment is not otherwise provided, the Borough shall be obligated to levy *ad valorem* taxes upon all taxable real property within the Borough without limitation as to rate or amount for the payment thereof.

Section 6. Each of the Trust Loan Agreement, Fund Loan Agreement and the Escrow Agreement are hereby authorized to be executed and delivered on behalf of the Borough by the Mayor or Chief Financial Officer in substantially the forms on file in the offices of the Borough, with such changes as the Mayor or Chief Financial Officer in their respective sole discretion, after consultation with counsel and any advisors to the Borough and after further consultation with the Trust and the State and their representatives, agents, counsel and advisors, shall determine, such determination to be conclusively evidenced by the execution of each of such Trust Loan Agreement, Fund Loan Agreement and Escrow Agreement by an authorized officer as determined hereunder. The Borough Clerk and Deputy Borough Clerk are each hereby severally authorized to attest to the execution of the Trust Loan Agreement, Fund Loan Agreement and Escrow Agreement by an authorized officer of the Borough as determined hereunder and to affix the corporate seal of the Borough to such documents.

Section 7. All actions heretofore taken and documents prepared or executed by or on behalf of the Borough by the Mayor, Chief Financial Officer, Borough Clerk, other Borough officials or by the Borough's professional advisors, in connection with the issuance and sale of the 2009 Bonds or the 2009 Project are hereby ratified, confirmed, approved and adopted.

Section 8. The Mayor, Chief Financial Officer and Borough Clerk are each hereby authorized to determine all matters and execute all documents and instruments in connection with the 2009 Bonds or the 2009 Project not determined or otherwise directed to be executed by the Local Bond Law, the Bond Ordinance, or by this or any subsequent resolution, and the signature of the Mayor, Chief Financial Officer or Borough Clerk on such documents or instruments shall be conclusive as to such determinations.

Section 9. All other resolutions, or parts thereof, inconsistent herewith are hereby rescinded and repealed to the extent of any such inconsistency.

Section 10. This resolution shall take effect immediately upon adoption this 14th day of September, 2009.

Recorded Vote

AYE NO ABSTAIN ABSENT

The foregoing is a true copy of a resolution adopted by the Borough Council on September 14, 2009.

DENISE BROUSE, Borough Clerk

[SEAL]